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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/733,554 12/04/00 KLINTZ

R 47953DIV

EXAMINER

HM12/0730

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WASHINGTON DC 20036

1111H

ART UNIT

PAPER NUMBER

1624

DATE MAILED:

07/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/733,554

Applicant(s)

Klitz et al.

Examiner

Hong Liu

Art Unit

1624



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-7, 12, 13, 15, 16, 18, 26-30, 36, 37, 39, 40, and 42-52 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1, 2, 12, 13, 15, 16, 18, 42, 43, and 52 is/are rejected.

7) ☒ Claim(s) 3-7, 26-30, 36, 37, 39, 40, and 44-51 is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

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DETAILED ACTION

Claims 1-7, 12 , 13, 15, 16, 18, 26-30, 36, 37, 39, 40, and 42-52 are pending in this application.

This action is in response to the applicants' amendment and reply filed on June 18, 2001.

Response to Arguments

Applicants' arguments filed on June 18, 2001 have been fully considered but they are not persuasive. Rejection to Claims 1, 2, 12 , 13, 15, 16, and 18 are maintained.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Applicants have amended the claims to limit the scope of W and argued that applicants had provided detailed information in preparing and using the compounds wherein W is - C(R8)=C(R9)-CN, -C(R8)=C(R9)-CO-R10, or -CH(R8)-CH(R9)-CO-R10 in controlling undesirable plant growth and desiccating or defoliating plants. The examiner has found this portion of the argument persuasive. Therefore, the rejection to claims 1-7, 12 , 13, 15, 16, 26-30, 36, 37, 39, and 40 under 35 U.S.C. 112, first paragraph, is hereby withdrawn. However, the rejection to Claims 18 and 42 under 35 U.S.C. 112, first paragraph, is maintained for reasons already made of record and newly added claim 52 is rejected under 35 U.S.C. 112, first paragraph

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for the same reason. Applicants have not provided an adequate traversal to refute the argument made by the examiner. There is still no art-recognized evidence of efficacy for the use of the compounds as pesticides. There are no examples in the specification showing how the compounds can be used as pesticides. Therefore, in the absence of experimental evidence showing a nexus between the herbicidal activity of the compounds and their pesticidal activity, the method of controlling pests has not been abled.

The rejection to #1) under 35 U.S.C. 112, second paragraph, is maintained. Applicants' argument that claim 2 is not a dependent claim of claim 1 is not found persuasive. Claim 2 recites "an enol ether of the phenyluracil compound of formula I defined in claim 1. (emphasis added)" which appears to include all the limitations of claim 1.

The rejection to #3) under 35 U.S.C. 112, second paragraph, is maintained. The word "3-phenyluracil" in claim 1, 2, 12, 13, 15, 16, 18, and 43 implies more than what is positively recited. "Compound" is suggested.


Claim Objections

Claims 3-7, 26, 30, 36-40, and 44-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the prior art of record nor a search in the pertinent art area teaches the compounds.

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Any inquiry concerning this communication should be directed to Examiner Hong Liu whose telephone number is (703) 306-5814. If attempts to reach the examiner by the phone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached at (703) 308-4716. The fax phone number for this group is (703) 308-4734 for "unofficial" purposes and the actual number for **official** business is (703) 308-4556. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose number is (703) 308-1235.

hl
July 27, 2001


Mukund Shah
Supervisory Patent Examiner
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